

No. 15594

United States
Court of Appeals
for the Ninth Circuit

MILTON MAYER,

Appellant,

vs.

ERNEST WRIGHT, Regional Commissioner of Internal Revenue Service and HAROLD HAWKINS, District Director of Internal Revenue Service, Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court, Northern
District of California, Southern Division

No. 36066

MILTON MAYER,

Plaintiff,

vs.

ERNEST WRIGHT, REGIONAL COMMIS-
SIONER OF INTERNAL REVENUE
SERVICE and HAROLD HAWKINS, DIS-
TRICT DIRECTOR, INTERNAL REVE-
NUE SERVICE, Defendants,

COMPLAINT FOR DECLARATORY JUDG-
MENT AND FOR INJUNCTION

Plaintiff Complains of Defendants, and Each of
Them, and for Cause of Action Says:

(1) This cause of action is brought under the laws and the Constitution of the United States; the Declaratory Judgments Act (28 U.S.C.A. Sec. 2201-2); the Injunction Act (28 U.S.C.A. Sec. 272 (a) and 3653(b)). This cause of action arises particularly under the First Amendment to the Constitution of the United States and also under Title 32, National Defense Chapter XVI, Selective Service System, Part 1622.14 (32 CFR Sec. 1602, et seq.), and under the Universal Military Training and Service Act (50 App. U.S.C.A. Sec. 451 et seq.).

(2) The jurisdiction of this Court is invoked in accordance with the Constitution of the United

States and in accordance with Title 28, U.S.C.A. Sec. 1431, et seq.

(3) Plaintiff is a citizen of the United States and a citizen and resident of the State of California, residing in that state in Monterey County, Carmel, California.

(4) The defendant Ernest Wright is sued in his official capacity as Regional Commissioner of Internal Revenue Service, San Francisco Region, with offices in the City of San Francisco, in said state, at 870 Market Street.

(5) The defendant Harold Hawkins is sued in his official capacity as District Director of Internal Revenue Service, with offices in the City of San Francisco, in said state, at 100 McAllister Street.

(6) A controversy exists between plaintiff and the Government of the United States as regards plaintiff's rights and other legal relations arising under the Constitution of the United States and the various statutes and laws hereinabove referred to, which statutes and laws were adopted pursuant to said Constitution of the United States.

(7) Plaintiff is, because of religious training and belief, conscientiously opposed to participation in war or in military preparation. Plaintiff's conscientious objection to war and to military preparation dates back many years, emanating from his belief in a Supreme Being. He has given expression to his conscientious objection to war and to military preparation, both orally and in writing, for the last sixteen (16) years or more.

(a) In the October 7, 1939 issue of the Saturday Evening Post, he expressed his unwillingness to participate in the oncoming war (said article was written before the outbreak of the Second World War, but was printed after the outbreak thereof). Said article was entitled "I Think I Will Sit This One Out," as it will more fully appear from the photostatic copy of the caption of said Saturday Evening Post article, hereto attached as Exhibit "A" and made part of this complaint.

(b) Plaintiff expressed his position as a conscientious objector to war in an article entitled "Conscience and the Commonwealth" in Vol. LXI, No. 28 of The Christian Century, dated July 12, 1944, as it will more fully appear from the photostatic copy of the first page of said article hereto attached as Exhibit "B" and made part of this complaint.

(c) The second installment of said article "Conscience and the Commonwealth" appeared in Vol. LXI, No. 29 of The Christian Century, dated July 19, 1944, as it will more fully appear from the photostatic copy of the first page of said article attached hereto as Exhibit "C" and made a part of this complaint.

(d) Plaintiff expressed his continued opposition to war and any participation on his part in military preparation in an article entitled "Sit This One Out?", which appeared in Vol. LIX, No. 3 of The Commonweal, dated October 23, 1953, as it will more fully appear from the photostatic copy of

page 1 of said article hereto attached as Exhibit "D" and made part of this complaint.

(8) Plaintiff did take a pacifist position in 1939 and became then and remained a conscientious objector to war and to military preparation. He has attended, since about 1940, Meeting for Worship of the Religious Society of Friends (Quakers) regularly, first in Chicago, then in Marburg, Germany, and later in Carmel, California. He was and is an active participant in these Friends Meetings and took—whenever called upon by other participants in the Meeting—official duties in them. It was recognized by leading Friends of the country that plaintiff's lectures, articles, and publications expressed the Friends' pacifist position and therefore he was called upon, about 1940, and did lecture regularly thereafter for the American Friends Service Committee (Quaker) in various parts of this country and in Europe. In such lectures plaintiff expressed the historic Quaker opposition to all war.

(9) Plaintiff was and is a member of the Board of the Jewish Peace Fellowship, and is a member of the Fellowship of Reconciliation, both religious pacifist organizations, the latter with affiliates in various parts of the world. Plaintiff served on the National Board of the Fellowship of Reconciliation.

(10) Plaintiff joined the Peacemakers, an absolute pacifist organization, which organization came into being in 1948. As such member he joined in all the public assertions of the Peacemakers and their opposition to war, and to military prepara-

tion, and together with other members of the Peacemakers and in witness to his conscientious objection to war in any form, did return his Selective Service Classification Card to the President of the United States, with the statement that for sake of conscience, he was unable to carry or possess the same.

(11) In the early part of the Second World War, on or about the year 1941, plaintiff was called upon by his Local Selective Service Board to complete his statement, which he did, and claimed thereon a conscientious objector status; however, his claim as to conscientious objector classification was denied by his Local Board, and thereupon the plaintiff informed said Board that if called upon to serve in the Armed Forces, either as a combatant or as a noncombatant, he would be unable to do so because of his conscientious objection to the war and to military preparation in any form.

(12) Plaintiff, having reached the age beyond which the Selective Service System has no jurisdiction upon the citizens of this country (50 U.S.C.A. App. (Supp. V) Par. 456(j) et seq.), felt constrained in conscience to continue to refuse to participate in war or in military preparation in any form. Therefore he informed the Internal Revenue Service of his inability in conscience to pay that part of his Federal Income Tax which, in accordance with the budget of the United States, adopted by Congress, was to be used for purposes of war or military preparation.

(a) In 1948 he first so refused to contribute to war or military preparation by opposing the payment of the military portion of his taxes, and he so wrote to the President of the United States.

(b) In January, 1953, while a resident of the City of Chicago, County of Cook, State of Illinois, he wrote to the Collector of Internal Revenue, stating the reasons why he was unable to pay his taxes in full, and why he was compelled as a conscientious objector to war and military preparation to withhold the payment of that part of his Federal taxes that were budgeted to be expended for war purposes. His statement to said Collector of Internal Revenue was as follows:

“I attach herewith my U. S. Individual Income Tax Return for Calendar Year 1952, together with my check, in payment of 50% of the tax claimed due, in the amount of \$99.38.

I attach herewith also my Declaration of Estimated Income Tax for Calendar Year 1953, together with my check, in payment of the first of four equal installments on my estimated 1953 Income Tax, in the amount of \$50.00.

On July 13, 1952 I wrote Mr. John B. Dunlap, Commissioner, in correspondence under his file IT:A:MLS-F1.10-C, explaining that the 1952 forms sent me to my Chicago address, and forwarded to me in Europe, did not include Form 1040-ES, Declaration of Estimated Income Tax for Calendar Year 1952. I explained further that I was therefore unable to file such Declaration and asked Mr. Dun-

lap to send me said Form. This Form was duly sent me, in Germany, but did not reach me until December 26, 1952. It was mailed from Chicago November 3, 1952, and was forwarded to me from Germany. My filing my 1952 Income Tax Return today appears to obviate the necessity for filing Form 1040-ES for 1952.

With reference to the payment, attached, of \$99.38 of the amount claimed due, \$198.76, as my 1952 Income Tax, I respectfully observe that I can not, as a conscientious objector, on religious grounds, to military service, perform the military service here asked of me—the purchase of armaments. Nor, as a loyal American, can I contribute to the militarization of my country and, through its militarization, to the ruin which has overtaken every democracy which has ever taken this course. I do not defy my Government; I accept gladly my obligation to maintain its free and peaceful institutions however large a share of my earnings they require. If you will inform me of any means whereby I may do so through payment to the Treasury Department, I shall immediately remit such payment in the amount of the balance claimed due in Income Tax for 1952. Meanwhile, and without repudiating the obligation asserted in the preceding sentence, I am remitting, in two equal parts, an amount equal to the balance claimed due, to two private agencies, the Fellowship of Reconciliation and the American Friends Service Committee, which, in the Government's own view, are serving our country's free and peaceful institutions. I do not wish to contend with my Gov-

tioned nearest Carmel, California, where I must be for the next several months. Can this be arranged? Chicago remains my place of permanent residence.

I am sorry to trouble you in this matter, and I hope that this letter will explain my non-appearance at your office on November 10 for the conference requested in your notice of November 3."

(g) Plaintiff received from the District Director of the Internal Revenue Service in Chicago, a letter dated December 9th, in which said District Director accepted plaintiff's statement that his refusal to pay that part of his income taxes which were to be used for war purposes were based on his conscientious objection to the war effort in any form; however, said District Director informed plaintiff that "the law provides no relief from payment of the tax on such grounds", and he claimed to have no alternative but to proceed with the collection against plaintiff.

(h) On January 8, 1954, plaintiff was informed that pursuant to his request the matter pertaining to the collection of parts of his income tax were being transferred to the District Director in California.

(i) Thereafter, a Warrant of Distraint was issued against plaintiff from the Director of Internal Revenue from its Salinas, California office, according to which a claim was made against the plaintiff for unpaid balance of his taxes in the amount of \$32.78, plus interest thereon to May 30, 1954, amounting to \$2.50, for a total of \$35.28, as will

more fully appear from the photostatic copy of a Notice of Warrant of Distraint which is attached hereto as Exhibit "F" and made part of this complaint.

(j) On May 29, 1954, plaintiff wrote to the Director of Internal Revenue at its Salinas, California office, in accordance with photostatic copy of said letter hereto attached as Exhibit "G" and made part of this complaint. In said letter plaintiff claimed that the matter of nonpayment of certain parts of his income tax used for war purposes is that of principle, and he requested that the execution of the Warrant be postponed until he was enabled to present a brief to the Commissioner of Internal Revenue in support of his position.

(k) On August 15, 1954, the plaintiff presented such a brief to the Commissioner of Internal Revenue Service in Washington, D. C., in accordance with the photostatic copy thereof hereto attached as Exhibit "H" and made a part of this complaint. In this brief the plaintiff stated inter alia:

"I am a conscientious objector to participation in war, and have been publicly identified as such since 1939. I have come to the conclusion that I can not, in conscience, and in love of my country, encourage my country's government to spend my country's substance in the killing of my innocent fellow-men anywhere, or in preparation for killing them, or in preparing my fellow-Americans of military age to kill and to be killed.

I have stated and argued my position publicly on

many occasions, and on many occasions published it. One of the recent occasions was in *The Commonwealth*, an American religious (Roman Catholic) weekly periodical, in its issue of October 23, 1953, under the title, *Sit This One Out?* I attach a copy of the published article as a part of this brief.

The \$32.78 plus \$2.50 interest claimed by the Internal Revenue Service in the present matter represents 50% of the balance due, as of March 15, 1953, of my 1952 income tax. I withheld 50% of the amount claimed on the basis that at least 50% of my income tax is used for purposes, which I can not in conscience support. (The percentage so used is, while difficult to determine exactly, actually much larger than 50.)”

(1) Plaintiff thereupon requested that the Government of the United States

“make it possible for me to pay the full amount of my income tax in conscience. I wish to pay the amount claimed, and any and all other amounts my government may claim, for any and all purposes which I can recognize, in simple conscience, as consistent with or conducive to the general welfare. If the amount claimed here can be so paid in, and so used, I shall pay it not only voluntarily, but gladly.

Until this protest of mine can be resolved, either by my government's allowing me to pay the full amount of my taxes for purposes of the general welfare, or by legal proceedings in which I may challenge my government's right to tax me against

my conscientious and religious precepts, I urge you to withhold execution of the warrant for distraint * * *

(m) On September 2, 1954, plaintiff received from the United States Treasury Department, Washington 25, D. C., a letter in answer to his brief of August 15, 1954, in which the Treasury Department stated that while it

“* * * appreciates the sincerity of your views in this matter, the federal income tax laws enacted by the Congress of the United States apply uniformly to every individual bound by citizenship or residence to the laws of this country * * *”

(n) Plaintiff was again informed that no relief can be granted to him in this matter notwithstanding his conscientious objection, and was further informed that the tax liability matter was within the jurisdiction of the District Director of the Internal Revenue of San Francisco, one of the defendants herein.

(o) Plaintiff was informed through the Monterey office of the District Director of Internal Revenue of San Francisco, that proceedings would be had against him unless he paid the amount of the unpaid taxes mentioned in said Notice of Warrant of Distraint, Exhibit “F”, and therefore, he wrote to said Monterey office of the District Director of Internal Revenue, one of the defendants herein, on November 3, 1954, as it more fully appears from the photostatic copy of said letter hereto attached as Exhibit “I” and made a part hereof. In said

letter (Exhibit "I") plaintiff wrote, among others,

"I am sorry that I can not now bring myself voluntarily and in conscience, to support war or an armaments race which, if it follows the course of every armaments race in human history, will end in war."

"* * * I may add that I am and always have been and will be, I hope, a loyal and patriotic citizen of that nation whose motto is, 'In God We Trust.'"

"* * * I want to say that I do not dispute the amount or computation of the tax, and that I believe in progressive income taxation of whatever degree necessary for the good of my country and its citizens."

"* * * My hope remains that my Government can and will find a way in which I may be allowed in conscience to pay whatever taxes it claims. Our statesmen and our people all profess their attachment to peace, and I am sure that they do so sincerely. Sharing their view, I know of no way to support it better than to pay my taxes for peaceful purposes."

(13) Plaintiff received no relief from the United States Treasury Department, nor from the District Director of Internal Revenue, San Francisco, one of the defendants herein, but to the contrary, said defendant having obtained from plaintiff information as to the names and addresses of any of his employers and the amount of any fees or emoluments due to him for such employment, proceeded

to collect the amount of plaintiff's unpaid income tax for 1952 that was withheld by him because of his conscientious objection of the use thereof for war purposes, and did collect on March 4, 1955, the sum of \$36.55 (the difference herein and the amount of said Notice of Warrant of Distrain, Exhibit "F", represents additional interest) as it more fully appears from the said voucher showing and receipt acknowledging payment, photostatic copy of which is hereto attached as Exhibit "J" and made a part hereof.

(14) Plaintiff alleges that the action of the defendant Harold Hawkins, District Director Internal Revenue Service, which action was approved by Ernest Wright, Regional Commissioner of Internal Revenue Service, defendant herein, is contrary to the Constitution of the United States and the laws and statutes made pursuant thereto for the following reasons:

(a) The First Amendment to the Constitution of the United States provides that

"Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; * * *"

Plaintiff claims that defendants' coercive action collecting from him taxes to be paid for war purposes when plaintiff, because of religious training and belief conscientiously objects to participation in war and military preparation in any form, prohibits plaintiff's free exercise of his religion.

(b) Congress must and did recognize the purport of the First Amendment to the Constitution of the United States which enjoins it from making laws prohibiting the free exercise of religion when it enacted the Universal Military Training and Service Act (50 App. U.S.C.A. Sec. 451 et seq.) and therein gave recognition to the free exercise of religion by those who for sake of conscience were unable to participate in war in any form. Pursuant to such recognition conscientious objectors were exempted from participation in military service.

As a conscientious objector, plaintiff claims that since he is not now of draft age, he ought to be given the same recognition as conscientious objectors of draft age, and he ought to be exempted from contributing to war and to military preparation by exempting him from payment of that part of his income tax that is used for the purposes of war, preparation for war and the reparation caused by war. Failure to give plaintiff such exemption would make the Universal Military Training and Service Act (50 App. U.S.C.A. Sec. 451 et seq.) and that part thereof which pertains to exemption of draft age conscientious objectors, class legislation forbidden by the Constitution of the United States.

(c) The decisions of the various federal courts interpreting the Universal Military Training and Service Act (50 App. U.S.C.A. Sec. 451 et seq.) as it pertains to conscientious objectors, consider the history of claimants for conscientious objector's

status, and in such cases claimants' contribution to war in any substantial form caused them to be deprived of their conscientious objectors' status.

Plaintiff, were he to submit to the coercion of the defendants and pay that part of his income tax that is expended for the purposes of war, would endanger his claim to the status of a conscientious objector, and he would be compelled, if drafted, to participate in a war contrary to his conscience and in violation of the First Amendment to the Constitution of the United States.

(d) Plaintiff at the present is beyond the statutory age limit under which male citizens of this country may be drafted into the Armed Forces of the United States. Such age limit may at the pleasure of Congress be changed any time, and therefore, plaintiff is not for all times exempted from call to military service. If plaintiff were to be successfully coerced by the defendants to pay that part of his income tax that is used for the furtherance of war, he would be deprived at this time and also in the future from claiming the status of conscientious objector. In case Congress shall choose to extend the age limit of draftees so as to include plaintiff within such age limit, he would be compelled to participate in war contrary to his religious training and belief, contrary to his conscience, and contrary to the First Amendment to the Constitution of the United States.

(15) Plaintiff states that he is entitled to a declaratory judgment declaring that in accordance

with the Constitution of the United States and the laws and statutes enacted pursuant thereto, and particularly because of his long-standing and conscientious objection to war in any form, he is to be exempted from the payment of that part of his income tax assessed against him which is expended for the furtherance of past, present and future war efforts.

(16) (a) Plaintiff is entitled to an injunction directed against the defendants herein restraining them in the future from levying upon, seizing, or selling any of plaintiff's property under any Warrant for Distraint, lien, or other process for the collection of that part of his assessed tax subsequent to the year of 1952, that is budgeted for war or for military preparation.

(b) In the alternative, plaintiff is entitled to a declaration by this Court, that 50% of his 1952 taxes, now expended for war and for military preparation and that part of his taxes for subsequent years that are budgeted for war purposes, be placed in the General Funds of the United States to be expended solely for peaceful purposes.

Wherefore, plaintiff prays:

1. That the rights and legal relations of the plaintiff under the Constitution of the United States and statutes and laws enacted pursuant thereto, particularly as regards the payment of that part of his Federal Income Tax that is expended for past, present, and possible future wars, be declared.

2. That this Court declares that the above named defendants, and each of them, having unlawfully collected from plaintiff the sum of \$36.55 as shown on Exhibit "J", and the sum of \$66.60 as shown on Exhibit "E", for a total of \$103.15, be ordered to refund the same to plaintiff with interest thereon from the date of the seizure thereof.

3. The defendants Ernest Wright, Regional Commissioner of Internal Revenue Service and Harold Hawkins, District Director, Internal Revenue Service, and deputies, agents, employees, and officials of the Director of Internal Revenue and the Treasury Department be permanently enjoined and restrained from levying upon, seizing, or selling any of plaintiff's property under any Warrant for Distraint, lien or other process for the collection of that part of plaintiff's Federal income tax for the years subsequent to 1952 that is budgeted for war purposes.

4. Upon final hearing it be ordered and adjudged:

(a) that the tender of 50% of the amount of the 1952 income tax assessed against the plaintiff upon the conditions above expressed, is in discharge of any and all of his liability on account of and with respect to his 1952 income tax.

(b) that the assessment of 100% of plaintiff's income tax for 1952 is invalid and illegal to the extent of 50% thereof, and the lien and Warrant of Distraint issued for the collection thereof to the extent of 50% thereof be cancelled, vacated, and set aside.

(c) that an order to show cause be issued out of this Honorable Court directing the defendants, at a time and place to be therein specified, to show cause why the injunctive relief herein prayed for should not be granted *Pendente Lite*; and that when the hearing is held upon said order to show cause, the defendants, their agents, servants, employees, and others acting under their control and direction by virtue of their orders, be temporarily restrained without notice, as it is herein prayed they be permanently enjoined.

5. In the alternative that this Court orders and adjudges that 50% of plaintiff's 1952 taxes that were budgeted and expended for war and military purposes, and such parts of his Federal income tax assessed for the years subsequent to 1952 that are budgeted for war and military preparation, be placed in the General Funds of the Treasury of the United States to be expended solely for peaceful and constructive purposes.

6. And plaintiff prays for such further relief as equity meets and justice requires.

Dated: December 6, 1956.

HEISLER & STEWART,

By

Francis Heisler,

Attorneys for Plaintiff.

Duly Verified.

EXHIBIT "A"

The Saturday Evening Post, October 7, 1939

I Think I'll Sit This One Out—By Milton S. Mayer

Editor's Note—Mr. Mayer, who here speaks for himself, is assistant to the president of the University of Chicago. Just turned thirty-one, he is well to the Left, yet in rebellion against the prevailing international romanticism of American radicals. His article was written two weeks before the outbreak of war and then called I Think I'll Sit the Next One Out. He has revised its tense since. He lives in Hull House, Chicago, and is writing his autobiography under the working title of An Old Man of Thirty.

When I was in college, ten years ago, the bright young men were taking the Oxford oath. I was one of the bright young men, but I didn't take the Oxford oath. Of course I wasn't going to fight in any more imperialist wars, but something told me that the rest of the boys were. Something told me that these peacetime pacifists were bad company. Something told me that they wouldn't fight in any more imperialist wars except the next one. So I didn't take the Oxford oath.

Sure enough, I'm all alone now, as I was then. Of a dozen college friends, all of them the noisiest kind of slackers back in 1929, only one of them isn't itching to get his hands on a gun. He says he's going underground when we enter the war, and he's going to work for the revolution, and he wants

Exhibit "A"—(Continued)

to know if I'm with him. No, I'm against him, and it isn't because I've fallen for the democracy bunk again. It's because I haven't fallen for the democracy bunk or the revolution bunk either. I'm going to sit this one out for reasons all my own.

I think I know what brought the rest of the peacetime pacifists around, and I'm not sure that another batch of Hun atrocities—beg pardon, Nazi atrocities—won't bring me around. I'm afraid that when the bands start playing I'll get in line. I'm afraid that when the heat is on * * * sing psalms or empty bedpans behind the lines. I do not face this problem by getting a bombproof job in Washington while the goofs go out and stop the bullets. There is only one way to face this problem, and that is to face it. I have to decide, now or when we enter the war, to stand up and fight or to stand up and oppose the war.

And so I exercise such prudence as the unpredictable future permits and I make my decision now. I make my decision to oppose this war, to oppose it now and when America enters it, and I make that decision despite my horror of "the Berchtesgaden maniac" and my disinclination to set myself up as martyr to my ideals. I oppose the current war for three reasons. I think it will destroy democracy. I think it will bring no peace. And I think it will degrade humanity. And after I have explained what I mean, I shall try to answer the arguments of the peacetime pacifists.

Let me imagine that, as an average citizen of

Exhibit "A"—(Continued)

Massachusetts Bay Colony, I went to war, one fine day in 1755, in defense of home and fireside against the French and Indians. I subsequently learn that I fought and bled for the * * * * *

EXHIBIT "B"

Conscience and the Commonwealth

By Milton Mayer

I am a conscientious objector to this war, but I am not a pacifist; I am not a conscientious objector to war. I should like to explain my position to my countrymen. I do not hope to persuade them to it in time of war; but the war will end some day, and I should like to be of use to them then, at the cost, perhaps, of annoying them now.

By "pacifist" I mean the man who asserts that he will never support any war, and that all wars, future as well as past and present, are unjust. Here, it seems to me, the pacifist makes a fundamental error about the nature of man. He denies, in effect, that men are animals, with animal passions which may be more or less perfectly controlled but never perfectly. He mistakes men for angels. At the opposite extreme from the pacifist is the fascist, who mistakes men for beasts. The pacifist says that men, because of their nature, must never fight; the fascist says that men, because of their nature, must never do anything else.

The fact of the matter was discovered some two thousand years ago by a great many philosophers and is being rediscovered today by a great many

Exhibit "B"—(Continued)

psychologists. The fact of the matter is that man is an animal modified upward from the beasts and downward from the angels, retaining, as in all mergers, the worst features of each.

All Approve Organized Force

What does the pacifist mean by war? Surely not the *passé* notion of declared war among nations. I take it he means the use of organized force against men. But all men, including all pacifists, have always used organized force against men. No responsible member of any imperfect community—and all communities have always been imperfect—has ever suggested that law, unsupported by the night-stick, is adequate for the maintenance of justice.

I am sure that all pacifists support compulsory education, compulsory vaccination, and compulsory taxation, even when force is required to effectuate these blessings. Non-violent resistance in India is not right because India's cause is right. It is right because it is effective in the support of India's righteous cause. Gandhi is reported to have said that Satyagraha is the only weapon of an unarmed people. The immobile violence of Satyagraha is still violence; if enough Indians lie down on a railroad track, they will wreck the train and kill the passengers. The pacifist distinction between "force" and "violence" is meaningless.

I am afraid the pacifist is at bottom a sentimentalist, and not a psychologist or philosopher at all. He wishes that men were angels. He sees the horrors of war portrayed by a Tolstoi or a Goya and

Exhibit "B"—(Continued)

he hears their terrible words, "Is this what you were born for?" Horrified, he cries, "No!" and before he knows it he's a pacifist. But sentimentality is known to be the most unreliable of all human commodities, and so, when our peacetime pacifist sees the pictures of Jews or Christians tortured by Hitler, his sentimentalism sweeps him away again, and before he knows it he's a militarist. I can think of no movement in history so regularly and predictably emptied and filled and emptied again as pacifism, and I am afraid the reason is that pacifism is ultimately sentimentalism.

Realism's Requirement

But those of us who fight against this war have got to be realists. We have got to be realists because we want to get something done. And realism, it seems to me, compels us to face the fact that men are born to use all their powers to improve their lot. Nor can they always choose when to use which powers; they cannot think without sometimes feeling or feel without sometimes acting.

In this predicament—the human predicament—the rational use of force will always be necessary in the human community. With the increase of justice the use of force will be increasingly dispensable. But the pacifist seems to suppose that the time will come when force may be dispensed with altogether. He seems to suppose that the rational animal will some day get rid of the animal and consist entirely of the adjective.

I know that the use of force, even the just use

Exhibit "B"—(Continued)

of force, is always degrading to him who uses it. I know as well as W. S. Gilbert that the policeman's lot is not a happy one. But we have got to have policemen, and the highest-minded policeman sometimes has to crack heads in the course of enforcing just laws relating to vaccination, education, the payment of taxes, and the orderly emigration from a burning theater. Against an unjust assault by an unjust community, a just community would be compelled to have an army.

Is Man's Life Sacred?

I cannot follow the pacifist doctrine of the sanctity of human life. Certainly no non-believer in God can see anything sacred about a piece of meat running around on two legs with somebody else's fur on him instead of his own. The believer discerns something divine in every featherless biped, but even that discernment does not entitle him to be a pacifist. For if he holds human life sacred, he must certainly hold his own sacred, not because it is his but because it is a human life. If, then, he is attacked by a man who proposes to kill him, he must use whatever means are necessary, including wounding his assailant, perhaps fatally, to prevent the taking of a human life.

To the pacifist who rests his case on the sanctity of human life, any warring government will always say: "We, too, maintain the sanctity of human life. This is a defensive war, and we do not want to kill anybody. The killing we are compelled to do

Exhibit "B"—(Continued)

is strictly accidental. We have to keep the aggressor from killing us." I do not see how the pacifist can answer that argument unless he asserts that the war in question is not defensive. He will * * * * *

EXHIBIT "C"

Conscience and the Commonwealth. In Two Parts—
Conclusion. By Milton Mayer

We who fight against this war have got to face the fact that we are revolutionaries, rebelling against injustice, all injustice everywhere; rebelling against the injustice which produces the unjust wars which produce still more injustice. Our revolution cannot be bloody, for there is no percentage, as Louis Bonaparte put it, in merely "turning over the dungheap." But even if we thought that we could change men's hearts by blowing their heads off, we would still have to restrain ourselves from bloody revolution. With bombing planes selling at \$250,000 apiece, we modern revolutionaries cannot hope to get anywhere with violence.

But we would be skeptical of violence anyway, because we want our revolution to stick. With Machiavelli, that most practical of men, we see that the only two practical ways to treat people are to liberate them or exterminate them. Anything less than liberation and short of extermination merely irritates them.

'Not Enough Nails'

Among more or less equally guilty members of the human species, these repeated attempts to ex-

Exhibit "C"—(Continued)

terminate do not work. "There are not nails enough," as Carl Sandburg says, "to nail down victory." Even if we took Machiavelli's advice and exterminated our enemies—a sizable sewerage job, if nothing else—we might still fall victim, when we got soft and careless, to their children, to their neighbors who feared that they might be next on our list, or to our own dreadful sense of guilt.

And so our revolution cannot be bloody. And yet it must be the most radical revolution ever made. Any fairly mature infant must be at least dimly aware of the fact that something is radically wrong with the world. Radical revolution is the only hope of a world that has something radically wrong with it. And I call not only idealists to this revolution, but all men, including the most selfish, who disclaim any interest in the salvation of civilization and insist that they are interested only in protecting, defending and improving the comfort of themselves and their families. They cannot get comfort for themselves and their families in a world like this.

The radical revolution to which we all are called is a revolution of the political, economic and social values that flourish all around us and will flourish even more gaudily as the result of an unjust war.

A Revolutionary Slogan

For our political revolution we must take over the revolutionary slogan that all men are created equal and endowed by their Creator with certain inalienable rights. And by "all men" I mean noth-

Exhibit "C"—(Continued)

ing less than all men, including Jews in Germany, Negroes in Charleston, Germans who are now nazis, Japs who are now atrocious, and General Blood and Guts Patton. There must be no political slavery for any man anywhere—and, lest you think that this part of our revolution is the easy part, let me remind you that three-quarters of all the people on the earth are colonial or semi-colonial slaves.

The economic revolution we must make is even more heroic in size than the political revolution. We must overturn the economic order which makes political slavery inevitable.

It is no accident that most wars are between the so-called "have" and "have-not" nations, and this war the most sharply so of all that we have known. The economic order which we must overturn is the one that enables Mr. Churchill to hold what he has, whether or not he stole it. If Germany really needs some of what Mr. Churchill has, Germany must not be allowed to take it; it must be taken from Mr. Churchill and handed to Germany on a silver platter. In such an economic order, and only in such an economic order, will there be no Hitlers arising on the doctrine that people can get what they need only by hijacking it from the thieves who stole it from somebody else.

We must overturn an economic order that necessitates injustice. The order I refer to is capitalism, which is now engaged in an expensive attempt to change its name to free enterprise. I am not talking about limited private * * * * *

EXHIBIT "D"

Sit This One Out?

All the king's horses and all the king's men could not divert the world from the course which has brought it to its present pass; what, then, can I do, one man?

Milton Mayer

Just before the Second World War began, I decided to sit it out and said so. ["I Think I'll Sit This One Out!" Saturday Evening Post, Oct. 7, 1939.] I was younger then. Now I am older, and they tell me that blood is the milk of old men.

My position fourteen years ago was not religious. I decided against war on rational grounds and proclaimed myself a moral and social revolutionary. War, I thought, required men to violate their moral and social nature and employed, in its own nature, disproportionate means to the ends it pursued. I was sure—so young was I—that the Second World War would fail, like the First, to save the world for democracy.

Although I believed at the time that man's nature is God-given, I did not advance that most certain of arguments but rested my case, rather, on the evidence of things seen. I was not persuasive; the war went forward, ending, at last, in an unconditional victory over the forces of darkness.

I was then, as I am now, a Jew. I was, as I am now, a fellow-traveler of many Christian agencies, but it never occurred to me that I should become a Christian, or even, in a sense, that I should want

Exhibit "D"—(Continued)

to. I knew I was not good enough to be a Christian or a Jew. But Judaism was stuck with me. And the fact that I was not a good Jew did not entitle me to be a bad Christian. In addition, but by no means incidentally, my faith seemed to me to require that a Jew be a Jew not only in God's eyes and his own, but also in the world's; a point which has to be (and has been) argued elsewhere.

I have not made much progress in these past fourteen years. My prospect of rejection by the armed forces has improved, but I cannot say the same of my prospect of acceptance in higher circles, such as the Empyrean. I have, however, met some interesting people. In a period of national ecstasy my melancholy views had relieved me of some of my business connections, and I found that time was cheaper to come by than business—and very little less profitable, what with taxes and all. I took time to acquaint myself with Holy Writ and with holy men and was drawn, through God's grace, mistaken identity, or false pretenses, into progressively deeper association with religious activities, Jewish, Catholic, and Protestant.

I discovered that the Jewish Law permits a man to be peaceable and, indeed, unless God's call to the contrary is clear, requires him to be. I discovered that, for those Jews who read the Law equivocally, Christianity, which came to fulfill the Law, was clear and rigid on the point. "Ye have heard that it hath been said . . . But I say unto . . ."

Exhibit "D"—(Continued)

I discovered that Jesus took the peaceable way, offered it to a young man of flesh and blood, and taught it not only to disciples but to the multitude; that the peaceable Wayfarer was given His armament to carry not by His friends, but by His enemies, and at the end of the way was nailed to it; that the sword and the knout which were spoken of were not the sword of Acheson and Dulles and the knout of Hitler, Stalin, and McCarthy; and that when President Eisenhower, defending his rejection of clemency for the Rosenbergs, said, "Render unto Caesar the things that are Caesar's," he was quoting a reply to a question asked in wickedness.

If I am wrong about all these things, I am mortally wrong. I know that many who come in Christ's name, with better preparation than mine, are against me. Still, in these fourteen years, I have found support in a very small minority of every communion which professes Christ. And when the World Council of Churches announced, in 1948, that "war is contrary to the will of God," I rejoiced that my view of God's will had found its way into the church councils of this world. But when, in its next breath, the World Council said that there were three Christian attitudes toward war, I thought of the words of the Lord to my ancestor Isaiah, "Thou art wearied in the multitude of thy counsels," and of the words of the Lord to my ancestor Zephaniah, "I said, 'Surely thou wilt fear me, thou wilt receive instruction,' but they rose early, and corrupted all their doings." I did not dare to think of what Jesus

Exhibit "D"—(Continued)

said of those whom he found in Moses' seat: "Do not ye after their works, for they say, and do not."

Mr. Mayer recently served as visiting faculty member of the Institute for Social Research of Frankfurt University. He is now finishing a book on Germany.

October 23, 1953.

EXHIBIT "E"

U. S. Treasury Department
Internal Revenue Service

Oct. 21, 1953

Milton S. Mayer
5837 Blackstone Ave.
Chicago 37, Ill.

Account Number
53 22 3901108

Tax Period	Date	Tax	Credits
Yr. Mo.	Mo. Day Yr.		
52 / 00	03 / 15 / 53	198.76	\$99.38 cr
	3 / 16 / 53	Trfd Fr Uncl Cfy 44	66.60 cr
1st Notice	3 / 30 / 53	Unpaid Balance	\$32.78
2nd Notice	7 / 22 / 53	Penalty of 5 Percent.....	
Inc.	Interest, From 3/15/53 to 10/15/53.....		1.16
Type of Tax		Total	\$33.94

Pursuant to the provisions of law which the Collector of Internal Revenue is required to enforce, a warrant for distraint has been issued which authorizes the seizure and sale of your property or rights to property, or levy upon your salary, wages or other income. The warrant, now being held in this office, commands the taking of such distraint action, if necessary, as a means of collecting the account shown above.

To avoid the inconvenience, embarrassment and additional costs that result from such procedure, immediate payment should be made at the address shown below.

If remittance is made by mail, your check or money order should be made payable to the Collector of Internal Revenue. This letter should be returned with your remittance to:

Collector of Internal Revenue, South Division Office, 6555 Cottage Grove Avenue, Chicago 37, Illinois.

EXHIBIT "F"

U. S. Treasury Department
Internal Revenue Service

54 Apr 590197
Tr Fr Chicago, Ill.
23C 2 24 53
DAR 2 27 53

Milton S. Mayer
P. O. Box 2671
Carmel, Calif.

Date	Debits	Credits	52 IT Unpaid Balance
3 15 53	198.76	99.38	
3 61 53		66.60	32.78
Date of First Notice	Penalty of 5 percent		-----
3 30 53	Interest from		
	3 30 53 to 5 30 54		2.50
Date of Second Notice	Total		-----
7 22 53	Additional Interest GB		-----
	Total		35.28

Account Number and Remarks

Pursuant to the provisions of law which the Director of Internal Revenue is required to enforce, a warrant for distraint has been issued which authorizes the seizure and sale of your property or rights to property, or levy upon your salary, wages or other income. The warrant, now being held in this office, commands the taking of such distraint action, if necessary, as a means of collecting the account shown above.

To avoid the inconvenience, embarrassment and additional costs that result from such procedure, immediate payment should be made at the address shown below.

If remittance is made by mail, your check or money order should be made payable to the Director of Internal Revenue. This letter should be returned with your remittance to:

Director of Internal Revenue, 221 Salinas Street, Salinas, California.

EXHIBIT "H"

Milton Mayer, P. O. Box 2671, Carmel, California
August 15, 1954.

Commissioner T. Coleman Andrews
Internal Revenue Service
U. S. Treasury Department
Washington, D. C.

In re your 54 Apr 590197. Tr fr Chicago, Ill.
23C 2 24 53. DAR 2 27 53.

From Director of Internal Revenue, Salinas,
Calif.

Dear Mr. Commissioner:

In the above matter a warrant of distraint has been issued for collection from me of \$32.78 plus \$2.50 interest, which the Internal Revenue Service claims as the unpaid balance of my 1952 income tax.

My 1952 return was filed with the Director of Internal Revenue at Chicago, Ill., my place of permanent residence, as have my returns for succeeding years. I can now be reached either through my permanent residence, 5837 Blackstone Avenue, Chicago 37, Ill., or at the above address in Carmel, Calif. The instant matter was transferred at my request by the Director of Internal Revenue at Chicago to the Director of Internal Revenue at Salinas, Calif., inasmuch as I expect to be in Carmel for several months.

On May 29, 1954, immediately upon receipt of the notice of issuance of the warrant, I wrote the Director at Salinas asking if service of the warrant might be delayed until I was able to take up the

Exhibit "H"—(Continued)

matter with you. I told him that I should have to be traveling until August 15, 1954, and that I should then submit a brief to you and send him a copy of it.

In the absence of my counsel, Mr. Francis Heisler of Chicago and Carmel, and of the Illinois and California bars, I am undertaking to submit the brief in the form of this letter.

I am a conscientious objector to participation in war, and have been publicly identified as such since 1939. I have come to the conclusion that I can not, in conscience, and in love of my country, encourage my country's government to spend my country's substance in the killing of my innocent fellowmen anywhere, or in preparation for killing them, or in preparing my fellow-Americans of military age to kill and be killed.

I have stated and argued my position publicly on many occasions, and on many occasions published it. One of the recent occasions was in *The Commonwealth*, and *American religious* (Roman Catholic) weekly periodical, in its issue of October 23, 1953, under the title "Sit This One Out?" I attach a copy of the published article as a part of this brief.

The \$32.78 plus \$2.50 interest claimed by the Internal Revenue Service in the present matter represents 50% of the balance due, as of March 15, 1953, of my 1952 income tax. I withheld 50% of the amount claimed on the basis that at least 50% of my income tax is used for purposes of war, which I can not in conscience support. (The percentage so used

Exhibit "H"—(Continued)

is, while difficult to determine exactly, actually much larger than 50%.)

For several years past I have taken this position with reference to my income tax, but 1952 was the first of those years in which I was owing a tax at the end of the year. I have repeatedly informed both the Director of Internal Revenue at Chicago and the President of the United States of my position, and I have repeatedly stated, and I do so here, that I do not challenge the right of my government to tax me, in any amount whatever, for purposes which I can support in conscience. I support the principle of progressive income taxation, and I do not object to the present rate. What I object to is my country's use of my money for war and for the delusion that war can be prevented by armaments.

I appeal to you, sir, as I have on previous occasions to the Director of Internal Revenue at Chicago and to the President of the United States, to make it possible for me to pay the full amount of my income tax in conscience. I wish to pay the amount claimed, and any and all other amounts my government may claim, for any and all purposes which I can recognize, in simple conscience, as consistent with or conducive to the general welfare. If the amount claimed here can be so paid in, and so used, I shall pay it not only voluntarily, but gladly.

Until this protest of mine can be resolved, either by my government's allowing me to pay the full

Exhibit "H"—(Continued)

amount of my taxes for purposes of the general welfare, or by legal proceedings in which I may challenge my government's right to tax me against my conscientious and religious precepts, I urge you to withhold execution of the warrant for distraint which has now been issued.

I shall be grateful to you for your earnest consideration of my appeal, and for any effort you may be able to make to free me from my dilemma.

Sincerely yours,

Milton S. Mayer.

cc: Director of Internal Revenue, 221 Salinas Street, Salinas, Calif. Mr. Francis Heisler, Attorney-at-Law, Carmel, Calif.

EXHIBIT "I"

U. S. Treasury Department November 3, 1954
Internal Revenue Service
575 Calle Principal
Monterey, California

Attention: Miss Fassinger.

Dear Miss Fassinger:

I am sorry that I can not now bring myself, voluntarily and in conscience, to support war or an armaments race which, if it follows the course of every armaments race in human history, will end in war. The only direct contribution to this end which my Government requires of me is a large proportion of my United States income tax. I must therefore reaffirm my position, which I have af-

Exhibit "I"—Continued)

firmed to the Commissioner of Internal Revenue and to you, with reference to that proportion of my 1952 income tax which I calculate is used by my Government to this end.

I may add that I am and always have been and will be, I hope, a loyal and patriotic citizen of that nation whose motto is, "In God We Trust." If the World Council of Churches is correct in asserting that "war is contrary to the will of God," I feel that a citizen of the United States well serves his country by trying to follow the will of God.

I want to say that I do not dispute the amount or computation of the tax, and that I believe in progressive income taxation of whatever degree necessary for the good of my country and its citizens. I want also to thank you and the other representatives of the Internal Revenue Service with whom I have dealt for your uniform friendliness and your concern to help me in my dilemma.

My hope remains that my Government can and will find a way in which I may be allowed in conscience to pay whatever taxes it claims. Our statesmen and our people all profess their attachment to peace, and I am sure that they do so sincerely. Sharing their view, I know of no way to support it better than to pay my taxes for peaceful purposes.

Sincerely yours,

Milton S. Mayer.

EXHIBIT "J"

36.55	54-Apr-590197	36.55
District Director of Internal Revenue		36.55

Thirty-Six and 55/100_____

Collection Officer's Receipt for Taxes (Original)

No. 3539738. Check: (2-28) \$36.55. Date (Month, day, year): 1-9-55. Received of (Name): Milton S. Mayer. Address (Number, street, city, zone, State): P. O. Box 2671, Carmel, Calif. Sum of: \$36.55. Tax: \$32.78. Interest: \$3.77. Covering (Class of tax): IT. Due for the (Period covered): 1952. The remittance will be forwarded to the District Director of Internal Revenue District at San Francisco, California. Signature of Collection Officer: Wanda T. (illegible).

[Endorsed]: Filed December 17, 1956.

[Title of District Court and Cause.]

AFFIDAVIT OF PLAINTIFF'S ATTORNEY

State of California,
County of Monterey—ss.

Francis Heisler, being first duly sworn, deposes and says:

That he is a practicing attorney admitted to practice in the State of California, and admitted to practice before this Honorable Court, as well as before the Supreme Court of the United States.

That he is one of the attorneys for plaintiff Milton Mayer in the above entitled cause, and he prepared together with his associates the complaint

filed by said plaintiff in this action. He says that upon careful investigation, the facts set forth in the complaint appear to him to be true. He further investigated the pertinent laws, and he believes that under the laws of the United States and the Constitution thereof, the prayer of the plaintiff for the relief asked for is fully justified in law.

Affiant further says that the prayer of the plaintiff for a restraining order against defendants is fully justified in law on the basis of the facts alleged in the complaint, and that such order for a restraining order ought to issue. Such order in the instant case is proper and necessary because he truly believes that without it the plaintiff will be irreparably damaged. Without such order, plaintiff will be penalized either by a threatened levy upon his property or by a subsequent disability to claim his status as a conscientious objector.

Affiant submits this affidavit for the purpose of presenting to this Court that his belief that a restraining order without notice upon defendants ought to be granted to plaintiff as prayed for in his complaint.

/s/ FRANCIS HEISLER,

One of Attorneys for Plaintiff.

Subscribed and sworn to before me this 14th day of December, 1956.

[Seal] /s/ FRANCES A. OLIVER,

Notary Public in and for the County of Monterey,
State of California. My Commission Expires
October 15, 1957.

[Endorsed]: Filed December 17, 1956.

[Title of District Court and Cause.]

**ORDER TO SHOW CAUSE AND TEMPORARY
RESTRAINING ORDER**

Upon reading the verified complaint for injunction and declaratory relief of plaintiff here, wherefrom it appears that unless defendants above named, their officers, agents, servants, employees and all others acting under their control and direction and by virtue of their orders, are restrained from doing and threatening to do the acts of which complaint is herein made, that plaintiff will suffer great and irreparable damage; and it further appearing that it is accordingly appropriate to issue a restraining order against defendants, without notice, and that the issuance of such restraining order will not prejudice the interest of defendants or of the United States, now, therefore:

It Is Further Ordered that defendants above named be and appear before the above entitled Court, the Honorable O. D. Hamlin, Judge thereof, at his courtroom, Post Office Building, Seventh and Mission Streets, San Francisco, California, on the 27th day of December, 1956, at the hour of 10 o'clock a.m. of said day, then and there to show cause, if any they may have, why a preliminary injunction should not issue out of this Court enjoining and restraining defendants, their officers, agents, servants, employees, and all others acting under the control and direction and by virtue of their orders, from doing any and all of the acts for which an injunction is prayed in said complaint for

injunction and declaratory relief and contained in the within restraining order.

It Is Further Ordered that this order to show cause and restraining order, together with the verified complaint and memorandum of points and authorities, may be served by attorneys for plaintiff.

Done in Open Court this 17th day of December, 1956.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed December 17, 1956.

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS

To Heisler and Stewart, P. O. Box 3996, Carmel, California:

Please Take Notice That on Monday, March 4, 1957, at the hour of 9:30 a.m., in the court room of the Master Calendar Judge, United States Court-house and Post Office Building, San Francisco, California, the defendant Harold Hawkins will move the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.
2. To dismiss the action on the ground that the court lacks jurisdiction because the action is for a declaratory judgment with respect to Internal Revenue taxes.
3. To dismiss the action on the ground that the

court lacks jurisdiction because the action is for an injunction restraining the collection of federal income taxes.

4. To dismiss the action on the ground that the plaintiff has failed to join indispensable parties.

Dated: February 15, 1957.

LLOYD H. BURKE,

United States Attorney,

/s/ By MARVIN D. MORGANSTEIN,

Assistant United States Attorney.

Certificate of Service Attached.

[Endorsed]: Filed February 15, 1957.

In the United States District Court, Northern
District of California, Southern Division

No. 36066

MILTON MAYER,

Plaintiff,

vs.

ERNEST WRIGHT, et al.,

Defendants.

ORDER DISMISSING CAUSE

Defendants' motion to dismiss the cause is granted.

Wherefore, It Is Ordered, Adjudged and Decreed that the above entitled cause be and the same is hereby dismissed.

Dated: March 18, 1957.

/s/ LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed March 18, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Order Appealed From: Order of March 18, 1957 entered by the Honorable Louis E. Goodman, one of the Judges of the United States District Court for the Northern District of California, Southern Division, dismissing the above entitled cause.

The above named plaintiff-appellant hereby appeals to the United States Court of Appeals of the Ninth Circuit from the above stated Order of March 18, 1957.

May 13th, 1957.

HEISLER & STEWART,
/s/ By FRANCIS HEISLER,
/s/ CHARLES A. STEWART,
Attorneys for Plaintiff-Appellant.

[Endorsed]: Filed May 13, 1957.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

The premium on this bond is \$10.00 per annum.

Whereas, the Plaintiff has appealed to the United States Circuit Court of Appeals, for the Ninth Circuit from the judgment of this court entered

Now, Therefore, in consideration of the premises and of such appeal, the undersigned, Maryland Casualty Company, a corporation duly organized and existing under the laws of the State of Mary-

land, and duly authorized to transact a general surety business in the State of California, does undertake and promises on the part of the Plaintiff, to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof, the above entitled Court, may proceed summarily in the above entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefor against the Surety and award execution therefor, all as provided by and in accordance with the intent and meaning of Section 73C of the Federal Rules of Civil Procedure.

In Witness Whereof, the corporate seal and name of the said Surety Company, is hereto affixed and attested at San Francisco, California, by its duly authorized officer, this 13th day of May, 1957.

[Seal] MARYLAND CASUALTY
 COMPANY,

/s/ By C. BAIRD,
 Attorney-in-Fact.

Notary's Certification Attached.

[Endorsed]: Filed May 13, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for the appellant:

Excerpt from Docket Entries.

Complaint.

Affidavit of Francis Heisler.

Order to Show Cause.

Minute Order denying motion for preliminary injunction and for discharge of order to show cause.

Notice by Defendants to Dismiss.

Order Dismissing Cause.

Notice of Appeal.

Appeal Bond.

Appellant's Designation of Record on Appeal.

Statement of Points Upon Which Appellant Intends to Rely on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 21st day of June, 1957.

[Seal] C. W. CALBREATH,
 Clerk,

/s/ By MARGARET P. BLAIR,
 Deputy.

[Endorsed]: No. 15594. United States Court of Appeals for the Ninth Circuit. Milton Mayer, Appellant, vs. Ernest Wright, Regional Commissioner of Internal Revenue Service and Harold Hawkins, District Director of Internal Revenue Service, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: June 21, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15594

MILTON MAYER,

Appellant,

vs.

ERNEST WRIGHT, REGIONAL COMMIS-
SIONER OF INTERNAL REVENUE
SERVICE and HAROLD HAWKINS, DIS-
TRICT DIRECTOR, INTERNAL REVE-
NUE SERVICE, Appellees.

STATEMENT OF POINTS RELIED UPON
BY APPELLANT

The points upon which appellant will rely on appeal are:

The Trial Court erred:

1. In dismissing the complaint on the ground that it failed to state a claim against appellees upon which relief can be granted.

2. In dismissing the complaint for lack of jurisdiction in an action for a declaratory judgment with respect to Internal Revenue taxes.

3. In dismissing the complaint on the ground that the court lacks jurisdiction because the action is for an injunction restraining the collection of federal income taxes.

4. In dismissing the complaint on the ground that the plaintiff failed to join indispensable parties.

HEISLER & STEWART,

/s/ By FRANCIS HEISLER,

/s/ CHARLES A. STEWART,

Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed July 19, 1957. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To Clerk of the United States Court of Appeals for
the Ninth Circuit:

Appellant hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit taken by notice of appeal the following portions of the record, proceedings, and evidence in this action:

1. Complaint for Declaratory Judgment and for Injunction.
2. Affidavit of Plaintiff's Attorney.
3. Order to Show Cause.
4. Notice of Motion to Dismiss.
5. Order Dismissing Cause.

6. Notice of Appeal.
7. Copy of Cost Bond.
8. This Designation of Contents of Record on Appeal together with Proof of Service.
9. Certificate of the Clerk.

HEISLER & STEWART,
/s/ By FRANCIS HEISLER,
/s/ CHARLES A. STEWART,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed July 19, 1957. Paul P. O'Brien,
Clerk.